TCB Council

Response to FCC Notice of Proposed Rulemaking
ET DOCKET 13-44

The TCB Council (TCBC) is pleased to submit this reply and commentary on the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM) released February 15, 2013 and published in the federal register on May 3rd 2013. The TCBC, while primarily a voice for the Telecommunications Certification Bodies also includes members from across the wireless industry, including manufacturers, test laboratories, industry experts and other interested parties.

The TCBC has been working with the FCC since the inception of the TCB program. We value our close association and appreciate the efforts of the Commission, primarily through the Office of Engineering and Technology, to develop and foster the TCB program. It is a true success story, grounded in open cooperation, shared information and a desire to serve the wireless industry and its constituents.

This proposals in the NPRM have a significant impact on the program and we appreciate the effort taken by the Commission to update the TCB program based on more than ten years of cooperation between the FCC, TCBs, test laboratories and manufacturers.

Our response embodies many ideas that were discussed during a formal meeting among our membership at the April 2013 TCB Workshop and subsequent discussions with individual members. We respectfully submit the following comments, which reference particular sections of the NPRM as well as supplementary documentation. We look forward to a constructive dialogue on matters related to the NPRM that affect TCBs in particular and the community in general.

Yours sincerely,

Michael Derby

Michael Derby
Chair, TCB Council
14th June 2013

Contents

Introduction

Within the NPRM the proposed changes are split into three main categories: The TCB Program; Test Laboratories; Measurement Procedures. Our comments on the proposed changes and the request for feedback in each area are similarly split.

TCB Program (Paragraphs 15 – 45 of the NPRM)

The proposals for changes to the certification system and the role played by TCBs covers the following areas:

- Certification of RF equipment (paragraphs 15 – 27);
- Post market surveillance (paragraphs 28 – 33)
- Assessing TCB performance (paragraphs 34 – 42)
- TCB accreditation (paragraphs 43 – 45)

Certification of RF equipment

We support the primary proposal that the FCC no longer issue certifications and all grants are to be issued by TCBs. The FCC noted that TCBs already approve 98% of applications, with the remaining 2% of approvals primarily consisting of devices on the "TCB Exclusion list".

However, the TCBC recognizes the need for FCC oversight with respect to new technologies and devices for which published test guidance is either unavailable or under review. We welcome the replacement of the current exclusion list with expansion of the current Permit But Ask (PBA) procedure to also allow for pre-grant testing by the Commission (as currently required for DFS Master devices operating under Part 15E, for example).

The TCBC also welcomes the codification of the PBA process within CFR 47 and recognizes the flexibility for all concerned by maintaining the list of devices subject to the PBA processes within the FCC's knowledge database (KDB) system.

The proposal that TCBs be allowed to dismiss applications is acceptable on the condition that the rules clearly indicate that a TCB only has the authority to dismiss applications that were processed by that TCB.

The TCBC respectfully asks the Commission to consider elements of the FCC's approval process that are currently unavailable to TCBs, specifically the ability to approve a product but defer the issuance of the grant until the device is released for marketing purposes. This "pre-market certification" is a function that our customers have requested. The ability for TCBs to do this (with a reasonable limit on the duration of the pre-market period) would be welcomed. This capability, in our view, does not carry with it any negative impact on the certification process or integrity of the program.

Post market surveillance

The post-market surveillance program is a challenge for all TCBs. There are two primary burdens that the TCBs face: 1) obtaining samples that have been configured for surveillance testing in a timely fashion and 2) the quantity of samples that have to be tested. The surveillance program elicited many comments during the April 2013 workshop.

One of the proposals set forth in the NPRM is to provide a mechanism for the FCC to have the option to select specific devices for surveillance. We welcome that notion.

A common theme that arose during recent discussions was to implement a method of requesting samples through the FCC electronic filing system. In this way, the FCC would be able to track the progress of specific requests. Having the sample request letter come directly from the FCC carries significant leverage and levels the playing field for TCBs participating in the program.

The TCBC also requests that the Commission reconsider the basis for surveillance sample requests. The current requirement for EMC surveillance is 5% of all applications, including Change in IDs and Permissive Changes. We would like to propose the following be excluded from being considered for surveillance:

- Devices subject to a change in ID.
  Rationale: If the TCB did the original listing the original device is already in the list of potential surveillance items. Many times, the application for a Change in ID is followed by a Permissive Change and so the device is counted multiple times for surveillance. For these reasons we would request that either devices subject to a Change in ID be excluded from surveillance or the surveillance for these items be counted separately and be subject to an administrative review of the labeling and internal/external appearance (for comparison to the originally certified device).

- Device subject to Permissive Changes.
  Rationale: Because devices subject to Permissive Changes are variations of previously certified devices, we ask the Commission to exclude devices subject to a C2PC where the proposed change requires no EMC test report (e.g., a software change to reduce capabilities or a change that only requires RF exposure evaluation without power reduction).

In the rulemaking we support the notion that the Commission condense references to sample surveillance into one section and to codify surveillance reporting by TCBs (with flexibility to set and or modify dates).

The FCC requested suggestions for ways in which post market surveillance may be completed by the FCC without incurring costs by the FCC. We support greater post market surveillance activities by the FCC directly because it appears to carry more weight within the industry, removes a burden from the main certifying resource (TCBs) and helps to reduce the negative effects of the increased business pressure between TCBs.
One suggestion is to note the "Canadian Representative" requirement imposed by Industry Canada, where the purpose of the Canadian Representative is intended to be for providing a post market surveillance sample. Perhaps the FCC could consider a situation where every certification is accompanied by an acknowledged USA Representative, who is responsible for providing post market surveillance samples. The FCC could then request the sample from the USA Representative and the sample could be sent by the Manufacturer or the USA Representative to a TCB or other independent test laboratory within the USA.

Finally, it should be noted that the average non-compliance rates observed during the TCB post market surveillance activities were not reduced by the increase in sampling rate from 2% to 5%. Since the non-compliance rates were not reduced, it seems that the increase in requirement was not beneficial. We wish for that to be observed and, based on that fact, we would support any resulting reduction of sample rate by TCBs. We note that the effects of an increase in sampling rate directly by the FCC is a factor which is unknown to us.

Assessing TCB performance

The TCBC is in full support of the proposed changes that give the Commission more flexibility when there are concerns related to the performance of a TCB. The global nature of our industry requires that uniform criteria be applied across all TCBs. Integrity, trust and consistency are hallmarks of a successful product certification program. A "stepped approach" to addressing TCB performance makes sense; the intent of any action should be towards performance improvement. Action through the accreditation bodies is appropriate and should be robust and evenly applied across MRA partner economies.

TCB accreditation

We welcome the proposals for codifying the recognition process for TCBs such that FCC recognition is required for all TCBs. We also welcome the notion to consolidate the requirements for foreign and domestic TCBs in a single place.

The TCB community notes that differences exist in requirements between foreign and US-based TCBs in certain areas. As an example, US-based TCBs are required to have review staff be assessed by the Accredited Body for their ability to perform product testing. For foreign TCBs this does not always appear to the case; testing capabilities are covered by the ISO/IEC 17025 audits of the test lab(s) that are used to perform sample surveillance testing. Having a common set of requirements for all TCBs—domestic and foreign—would be welcomed.

The TCB council is in favor of the proposed references to newer standards for testing and certification (ISO/IEC 17025, ISO/IEC 17065 and ISO/IEC 17011) provided that appropriate transition periods, consistent with those being applied by the various Accrediting Bodies (ABs) involved in the TCB program, are implemented. The transition period to the newer standards should allow the ABs to have the time to convert all the TCBs from the current standards to the newer standards.

Assessment every two years for TCBs is accepted without comment.
This section also proposes to delegate authority to the OET to update references to measurement procedures and other industry standards in Parts 2, 5, 15 and 18 of the rules. This is also proposed later in the NPRM and addressed in the *Measurement Procedures* section of this document.

Role of Test Laboratories and Laboratory Accreditation Bodies (Paragraphs 46 – 72 of the NPRM)

Paragraphs 46 through 72 of the NPRM primarily address the role of testing laboratories in the approvals process. They cover the following 5 areas:

- Test Laboratory Accreditation (paragraphs 46 - 53);
- Test Laboratory Accrediting Bodies (paragraphs 54 – 56)
- Test Site Validation (paragraphs 57 – 59);
- Measurement procedures (paragraphs 60 - 70);
- Other (paragraphs 71 - 72)

Test Laboratory Accreditation and Accreditation Bodies

In the NPRM the FCC is proposing that only accredited laboratories can be used to perform testing for equipment approvals. The proposal would require that the testing must be performed by a laboratory that has been accredited and is located in a country with an MRA with the United States, or has been accredited by an Accrediting Body recognized by the Commission for performing accreditations in the country where the laboratory is located. The Commission would maintain a list of the accredited laboratories and their scope of accreditation.

The TCBC considers that this represents a significant improvement in the program; However, we suggest that the following be considered when making this change in the requirements:

- Accreditation not be required within the US or within MRA partner economies. (But perhaps some extra guidance to TCBs on accepting data from unaccredited labs).
- Accreditation through an authorized AB is required in economies that do not have an MRA in-place.
- Under 17025, test laboratories are allowed to subcontract work to other laboratories; sub-contracted laboratories do not have to be accredited providing the 17025 laboratory has adequately assessed the sub-contractor. As a point of clarification, does the FCC intend that the sub-contracted laboratory also be listed?
- TCBs receive test reports from agents that have used accredited laboratories for their testing. The report(s) submitted may contain data from different accredited laboratories but the report itself is not accredited. The TCBC would recommend that the language in either the rules or in associated TCB review guidance (i.e. KDBs) clearly delineate what is and what is not permitted when accepting test reports to support certification decisions.

- TCBs receive applications that may include a combination of test data collected by (unaccredited) manufacturers and data from accredited laboratories. This is particularly true in the case of new technologies where the manufacturer has significant experience and/or product-specific test equipment (e.g. testing against ANSI C63.17 for Part 15 D, conducted antenna port measurements for some licensed devices). Guidance on handlings these types of projects would be appreciated. Eliminating the ability for these unaccredited experts (manufacturers and consultants) to perform antenna port measurements could jeopardize the accuracy of measurements on new technologies.
- The expectation would be that the FCC-approved laboratories be clearly listed with their scope of products, ideally listed to match the equipment categories covered by a TCB's scope (i.e. A1 – A4 and B1 - B4).
- If TCBs are required to review the accreditation scopes of a laboratory, the TCBC respectfully requests that the approved Accrediting Bodies (AB) be required to list the scopes of accreditation on the AB's web sites and the TCB should not need to rely on the certificate provided by the test laboratory.
- In addition, some flexibility needs to be considered for test procedures that may not be covered by an AB. As standards and KDBs are updated, the ability for Test Laboratories and ABs to update scopes in a timely fashion is necessary.

We are concerned that the accreditation of laboratories located in countries that do not have a Mutual Recognition Arrangement will allow Declarations of Conformity (DoCs) be issued outside of the MRA process. We fully support the MRA process, the involvement of NIST and the office of the US Trade Representative. The MRA process has worked well for the laboratory industry and our constituents and notably US manufacturers.

A shift in this policy should consider that the access to foreign markets is uneven, which affects the US manufacturers' competitive advantage. Some leverage should be maintained through the regulatory process until, at a minimum, access to testing on the basis of National Treatment for testing entities be well-established, open, transparent and accessible. Constant vigilance and efforts at establishing MRAs with all trading partners should be reflected in the FCC's Rules and Policies.

Several members of the TCBC had concerns related to the removal of the site listings, specifically with respect to testing to support the verification approvals procedures. Many were in favor of the FCC retaining the 2.948 laboratory site listing process for verification work. We support this request for the FCC to maintain of the list of laboratories under 2.948 for verification only.

Test site validation

The proposal that radiated measurements only be allowed from test sites that meet ANSI C63.4:2009 site validation requirements raised concerns among the TCB membership for approvals against rule parts other than Part 15. Many licensed devices are evaluated against TIA 603 which uses a substitution method to determine the radiated power. These measurements can be performed on test sites meeting ANSI C63.4:2009 and also in fully-anechoic test chambers. Fully-anechoic chambers may be utilized for other radiated power measurements and the flexibility to all their use for spurious and fundamental measurements in accordance with FCC requirements should be maintained.

The requirement that test sites be validated every two years did not raise concerns among the membership.

Measurement Procedures

The proposal to update references from ANSI C63.4:2003 to ANSI C63.4:2009 and ANSI C63.10:2009 are welcomed. The TCBC has been active in the development of C63.10 and many of its members are involved in both C63.4 and C63.10 committees. These two standards have been published for almost four years and we expect to see newer editions released within the next year. The TCBC members are keen to see the 2009 versions of these standards adopted within the rules. We would recommend a transition period of not less than one year for laboratories to update their accreditation (where applicable) and test procedures to these standards.

The proposal to designate OET with the authority to update references to standards in Parts 2, 5, 15 and 18 of the rules, will offer a streamlined approach and allow the OET to keep the rules current with the standards as they are developed. The TCBC recognizes that many of the interested parties (test laboratories, manufacturers and regulatory bodies) are involved in the development of these standards and proposed changes to these standards are subject to a strict review process. However; any updates to the rules must allow for reasonable transition periods and the TCBC would request that the OET use the KDB system, or similar, to solicit feedback from the test laboratories and manufacturers prior to updating these references.